IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 34156 of 2007(N)

PETITIONER:

K.SURENDRAN,AGED 55 YEARS,
S/O. C.K. PANICKER, DEPUTY COLLECTOR GENERAL &
ADDITIONAL DISTRICT MAGISTRATE, COLLECTORATE
THIRUVANANTHAPURAM, RESIDING AT 'USHUS'
HOSPITAL JUNCTION, PARASSALA,
THIRUVANANTHAPURAM.

BY ADVs. SRI.K.P.DANDAPANI
& MILLU DANDAPANI

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
REVENUE (D) KERALA
THIRUVANANTHAPURAM.

BY SEIOR GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.34156 of 2007 N

Dated this the 27th day of November, 2007.

JUDGMENT

Petitioner is a Deputy Collector and Additional District Magistrate, presently posted as the District Collector at Thiruvananthapuram. He is to retire on 30.11.2007. He challenges Ext.P4 order of suspension passed by the Government suspending him from service pending a detailed enquiry.

2. The incident, which is referred to in Ext.P4 order of suspension, is an action stated to have been taken by the petitioner when he was an Additional Tahsildar at Neyyattinkara in 2006. He was called upon to consider an application for Transfer of Registry in relation to a land having an extent of 1 hectare, 16 ares and 10 Sq.M and the improvements therein in favour of one Thampi Rajan and Ms.Mary Felicita. Apparently, transfer of registry was sought for, on the basis of a Will stated to have been executed by the erstwhile owner of the property.

3. It seems that in the course of the proceedings for transfer of registry, an objection was taken at the instance of one Mr.Paulose, as regards

the proceedings for transfer of registry. There was an allegation that the petitioner did not afford adequate opportunity to the objector. Petitioner disputes the said allegation. Apparently, an Advocate on behalf of the objector moved the Revenue Divisional Officer raising an allegation that he was not given time to present his case on behalf of his client and that haste was being shown by the Additional Tahsildar. On 25.04.2006, the following order was passed by the Revenue Divisional Officer:

> **"Further proceedings are stayed until ample opportunity is given to counsel for respondent [Mr.Poulose] for entering appearance on behalf of the respondent and defending the case."**

4. This order was produced before the petitioner. But, transfer of registry was ordered, even thereafter. It seems that the direction issued by the petitioner to effect transfer in the records was carried in a statutory appeal before the Revenue Divisional Officer and there is also a stay of further proceedings in that regard granted by the Revenue Divisional Officer. Copy of the order passed by the Revenue Divisional Officer on 22.6.2006 is produced before me by the petitioner.

5. It also seems that Mr.Paulose had filed a complaint seeking a vigilance enquiry against the petitioner. Apparently, his complaint was looked into and the Deputy Collector, Vigilance, South Zone, conducted a detailed enquiry. Copy of the enquiry report, along with connected papers was made available pursuant to a direction issued by me in this regard.

6. I have gone through the enquiry report. The Inquiring Authority has noted therein that allegations of serious nature have been levelled against the petitioner and there is prima facie material to proceed with the vigilance case. There is also a recommendation for institution of a criminal case against the petitioner for the offences under Sections 467, 468, 471 and 120 B read with Section 34 of the Indian Penal Code. The preliminary enquiry report was considered by the Government and it is seen that taking note of the contents of the report and the nature of the allegations, a decision was taken to suspend the petitioner from service pending a detailed vigilance investigation. Accordingly, Ext.P4 order of suspension was issued suspending the petitioner and

another person from service. It is Ext.P4 that has been challenged in this writ petition.

7. A statement has been filed on behalf of the respondent justifying the order of suspension.

8. Mr.K.P.Dandapani, learned counsel for the petitioner, submits that the allegations contained in Ext.P4 and the memo of charges Ext.P3, relates to an incident which had taken place in the year 2006. At any rate, what is involved was a quasi-judicial discharge of functions by the petitioner. More importantly, petitioner is due to retire on 30.11.2007. Obviously, a suspension, at this stage, is not intended to have any real impact, but only casts a stigma on the career, which according to the petitioner, has, hitherto, been unblemished. It is contended that there is no reason to justify the suspension. He referred to the decision of this court in ***Muhammed v. State of Kerala {1997(2) KLT 394}.***

9. Learned Senior Government Pleader Mr.Nandakumar submits that serious allegations have been levelled against the petitioner and in the circumstances, the Government thought it fit to suspend the petitioner from service. Any interference

with the order of suspension, at this stage, would be construed as an expression of opinion by this court as regards the allegations levelled against the petitioner. The allegations merit a detailed enquiry. The fact that the petitioner is due to retire on 30.11.2007 is not a relevant factor, insofar as the legality of the order of suspension is concerned.

10. From the files, I note that after a fairly detailed preliminary enquiry, the Deputy Collector has noted that there seems to have been a haste on the part of the petitioner in disposing of the application for transfer of registry. He further notes that there is a possibility of the 'Will' stated to have been executed by Antony Jalis itself being fabricated. The objection raised by Mr.Poulose merited a consideration. The order of stay passed by the Revenue Divisional Officer on 25.4.2006 was not complied with by the petitioner. In the circumstances, the petitioner's conduct justifies a more detailed enquiry. Taking note of the report filed by the Deputy Collector, the Principal Secretary, Revenue Department has recommended a vigilance enquiry and also recommended that the petitioner be suspended

from service. It is in pursuance thereof the present order of suspension has been issued.

11. Mr.Dandapani, learned Senior counsel, submits that the justification for an order of suspension pending enquiry is generally to keep the incumbent away from service, so that he will not be in a position to either influence the persons who might to be required to give evidence or otherwise tinker with the relevant records, insofar as the enquiry is concerned. The fact that the petitioner retires from service on 30.11.2007 should have been taken as a fact, which will completely obviate the possibility of the petitioner tinkering with the records that might be produced at the stage of enquiry. Mr.Dandapani submits that, at any rate, petitioner would have to keep away from the office after 30.11.2007. He further submits that the only allegation levelled against the petitioner seems to be in relation to a 'transfer of registry' ordered by him in his capacity as the competent authority under the Transfer of Registry Rules, more than 1½ years ago. What he did was akin to or similar to hundreds of other orders under the Transfer of Registry Rules passed in the regular

course of business transacted in that behalf. Significantly, the aggrieved person had preferred an appeal before the Revenue Divisional Officer and further proceedings in pursuance to the direction for effecting mutation has been stayed. The discharge of functions by him partakes the character of a quasi-judicial nature. Therefore, the petitioner must be given a reasonable degree of protection for the action so taken by him. Insofar as the allegation that he did not appear before the Deputy Collector is concerned, Mr.Dandapani submits that he was holding the charge of the District Collector, Thiruvananthapuram, at that point of time and it was due to pressure of work that he was not able to appear before the Inquiring Authority. The said absence is irrelevant insofar as the allegations levelled against the petitioner are concerned.

12. In my view, this court would interfere with an order of suspension

> (i) when it is found to be so totally bereft of any materials, so as to render the action unreasonable and therefore, arbitrary whimsical and susceptible to a judicial review;

(ii) if it is vitiated by mala fide exercise of power;

(iii) if it is found to be issued by an authority without jurisdiction in terms of the Rules governing the Government servants or any other public authority for that matter.

13. Insofar as the first reason mentioned above is concerned, I am of the view that it cannot be said that there is total lack of materials before the Government so as to render the order of suspension to be vitiated by an arbitrary exercise of power. It was not a hasty action which ultimately precipitated Ext.P4 order of suspension. A preliminary enquiry was conducted into a complaint lodged by one Sri.Paulose, by a fairly higher ranked authority; Deputy Collector (Vigilance). The enquiry report was placed before the Head of the Department and it was perused by her. The allegations were found to be serious so as to merit a more detailed enquiry. There is also a recommendation that a vigilance case to be registered under the provisions of the Indian Penal Code. In the circumstances, I am not in a position to find that there was total dearth of materials before the Government, as to render the order of suspension as

one, which is vitiated by an arbitrary exercise of power.

14. Insofar as the ground of mala fide is concerned, I find from a perusal of the writ petition that there are no specific allegations of mala fides against any person. The sole respondent is the State of Kerala. There are vague suggestions of colourable exercise of power. They are no substitute for specific allegations of mala fides.

15. Thirdly, the order of suspension is passed by the Government itself and obviously the allegation of absence of authority would be misplaced. No such ground has been taken in the writ petition.

16. Mr.Dandapani may be correct in contending that the petitioner may not be able to influence any person or tinker with the records which might be produced at the enquiry if and when conducted after 30.11.2007. In my opinion, that may not be a reason sufficient to interfere with the order of suspension, which has been passed on grounds, that seem to be tenable and reasonable. After all, in the ultimate analysis, the question is whether the order of suspension is legal, valid and justified. As I have

indicated above, I do not find any reason to interfere with the order of suspension on any of the aforementioned grounds.

For all these reasons, I find that the writ petition is bereft of merit and the same is dismissed.

Sd/-
(V.GIRI)
JUDGE

sk/

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P.S. To Judge